

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

ANDY KIM, in his personal capacity  
as a candidate for U.S. Senate, et al.

Plaintiffs,

vs.

CHRISTINE GIORDANO HANLON,  
in her official capacity as Monmouth  
County Clerk, et. al.,

Defendants.

- and -

DALE A. CROSS, in his official  
capacity as Salem County Clerk, et al.,

as Interested

Parties.

Civil Action No.: 3:24-cv-1098  
(ZNQ)(TJB)

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION IN  
LIMINE NO. 6 TO EXCLUDE THE INTRODUCTION OR USE OF THE  
EXPERT REPLY OF DR. JOSH PASEK, PH.D**

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**TABLE OF CONTENTS**

TABLE OF CONTENTS .....	ii
TABLE OF AUTHORITIES.....	iii
ARGUMENT .....	1
CONCLUSION .....	2

**TABLE OF AUTHORITIES**

**RULES**

Fed. R. Civ. P. 26(a)(2)(D)(ii) .....	4
Rule 26(a)(2)(B).....	4

Defendants Christopher Durkin, Joanne Rajoppi, and Danielle Ireland-Imhof, in their official capacities, respectfully submit this memorandum of law in support of their motion to exclude the testimony “Expert Reply” of Dr. Josh Pasek, Ph.D, a proffered expert witness of Plaintiffs.

### **ARGUMENT**

Plaintiffs’ reply brief in support of their motion for a preliminary injunction attaches as “Exhibit A,” a supposed “Expert Reply of Dr. Josh Pasek, Ph.D.” (Dkt. # 95 at pp.48-57). Dr. Pasek’s “Expert Reply” does not purport to rebut any expert report submitted by any of the Defendants, given that Plaintiffs’ eleventh-hour filing prevented, almost by design, any meaningful opportunity for Defendants to procure their own experts. Instead, the “Expert Reply” is really nothing more than an attempt to add additional space to Plaintiffs’ reply brief, and to otherwise shoehorn into these proceedings additional argument disguised as opinion testimony.

Fed. R. Civ. P. 26(a)(2)(D)(ii) clearly prohibits this tactic in providing for “reply” expert opinion testimony if it is “intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B).” Rule 26(a)(2)(B), in turn, addresses witnesses “retained or specially employed to provide expert testimony in the case.” Because Dr. Pasek’s “Expert Reply” does not “reply” to any expert testimony, it has no place in these proceedings,

and should be excluded from the evidentiary hearing on Plaintiffs’ motion for a preliminary injunction.

**CONCLUSION**

For all of the foregoing reasons, Defendants respectfully request that the Court grant their motion in *limine* and bar the introduction or use of the “Expert Reply of Dr. Josh Pasek, Ph.D.”

Respectfully submitted,

**GENOVA BURNS LLC**  
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By: *s/ Angelo J. Genova*  
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Dated: March 18, 2024